

UNITED STATES MIDDLE DISTRICT COURT OF GEORGIA

Homer Douglas Cobb, IV,
Plaintiff,
v.
The United States Government,
Donald J. Trump, President,
Michael R. Pence, Vice President,
&
The Georgia State Lottery, Corporation,
Gretchen Corbin, C.E.O.
Brian Kemp, Governor
Defendants.

4:23-cv-127 (CobL)

CASE NO: ~~4:23-cv-127~~Date June 2023**MEMORANDUM OF LAW****LAW OF THE CASE**

15 THE PURPOSE of this memorandum is to clarify the law of the case and thereby Jurisdiction which is "Common Law"¹ a/k/a Natural Law and often identified as a "Court of Record". it is a system of jurisprudence, who's tribunal is the People and whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt.

20 Nisi Prius courts are "courts not of record" which are inferior and have no power to fine or imprison without the consent of its victim, these nisi prius courts are fiction, created by statutes and not People and therefore have no legal authority. These unconstitutional courts operate under statutes and thereby under corporate charter and not Constitutions. It is the epitome of Corporatism² a system of corporate legislation, who's tribunal is a corporate officer, aka judge.

25 Therefore whenever a nisi prius court proceeds against the will of sovereign People the court and its officers are vulnerable to collateral attack. When such a court forces its minions (BAR lawyers) upon the sovereign or moves to proceed with a competency hearing it wars against the Constitution and commits violence against the People.

30 "The very meaning of 'sovereignty' is that the decree of the sovereign makes law", and the following terms are the expression of that decree thereby interpreting the meanings of the phrases and words of the case, The Law of the Case.

¹ The common law is the real law, the Supreme Law of the land, the code, rules, regulations, policy and statutes are "not the law", Self v. Rhay, 61 Wn (2d) 261

² CORPORATISM. [Webster] the organization of a society into industrial and professional corporations serving as organs of political representation and exercising control over persons and activities within thei. jurisdiction

TABLE OF CONTENTS

- i. Judicial notice
- ii. Judges sworn to obey constitution irrespective of opinion and consequences
- iii. Supremacy clause
- iv. Common law is still law of the land
- v. Interpretation in favor of the people
- vi. No emergency has just cause to suppress the constitution
- vii. Constitutions must be construed to reference the common law - summary proceedings are null and void
- viii. Shall not infringe
- ix. Irreconcilable conflict between statute and constitution resolved in favor of the constitutionality and the beneficiary
- x. Supreme law is the bases of all law - all fiction of law is null
- xi. No one is bound to obey an unconstitutional law, no courts are bound to enforce it
- xii. Congress cannot alter rights
- xiii. Rights do not come in degrees
- xiv. States cannot license rights
- xv. Officers of the court have no immunity when violating constitutional right, from liability
- xvi. Immunity:

XI - NO ONE IS BOUND TO OBEY AN UNCONSTITUTIONAL LAW NO COURTS ARE BOUND TO ENFORCE IT

"The general rule is that a unconstitutional statute, whether Federal or State, though having the form and name of law as in reality no law, but is wholly void and ineffective for any purpose since unconstitutionality dates from the enactment and not merrily from the date of the decision so braining it. An unconstitutional law in legal contemplation is as inoperative as if it never had been passed. Such a statute lives a question that is purports to settle just as it would be had the statute not ever been enacted. No repeal of an enactment is necessary, since an unconstitutional law is void. The general principles follows that it imposes no duty, converse no rights, creates no office, bestows no power of authority on anyone, affords no protection and justifies no acts performed under it. A contract which rests on a unconstitutional statute creates no obligation to be impaired by subsequent legislation. No one is bound to obey an unconstitutional law. No courts are bound to enforce it. Persons convicted and fined under a statute subsequently held unconstitutional may recover the fines paid. A void act cannot be legally inconsistent with a valid one and an unconstitutional law cannot operate to supersede an existing valid law. Indeed, in so far as a statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal, or in anyway effect an existing one, if a repealing statute is unconstitutional, the statute which it attempts to repeal, remains in full force and effect and where a statute in which it attempts to repeal remains in full force and effect and where a clause repealing a prior law is inserted in the act, which act is unconstitutional and void, the provision of the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law. [16Am Jur 2d., Sec. 256:]

American Jurisprudence: Constitutional Law

16 Am, Jur 2d Sections 58 and 59, plus Section 52

"2. State Constitutions [Sections 58 and 59]

Section 58. Generally

A state constitution is the supreme written will of the people of a state regarding the framework for their government and is subject only to the limitations found in the Federal Constitution. It is the basic and supreme law of a state. It must be interpreted and given effect as the paramount law of the state, according to the spirit and intent of its framers. State constitutions derive their force, not from the conventions which framed them, but from the people who ratified them, and the intent to be arrived at when ascertaining the meaning of constitutional provisions is that of the people.

A state constitution declares general principles or policies and establishes a foundation for the law and the government, and is the direct and basic expression of the sovereign will. It is the mandate of a sovereign people to its servants and representatives, and no one of them has a right to ignore or disregard its mandates; the legislature, the executive officers, and the judiciary cannot lawfully act beyond its limitations. Thus, it is also the absolute rule of action and decision for all departments and officers of government with respect to all matters covered by it, and must control as it is written until it is changed by the authority which established it.

While the text of a state constitution must always be the primary guide to the purpose of a constitutional provision, it must be interpreted in a principled way that takes into account the history, structure, and underlying values of the document. Among the various interests that state governments seek to protect and promote, those interests represented by the state constitution are paramount to legislative ones, and thus no function of government can be discharged in disregard of or in opposition to the fundamental law.

Constitutional provisions control in any case of conflict with lesser laws, such as statutes, local ordinances, or administrative regulations. Thus, acts passed by the legislature inconsistent therewith are invalid. Neither an emergency nor economic necessity justifies a disregard of cardinal constitutional guarantees, nor can the common law or public policy considerations override constitutional mandates. It is the obvious duty of the legislature to act in subordination to the state constitution, for with reference to the subjects upon which the constitution assumes to speak, its declarations and necessary implications are conclusive upon the legislature. Thus, constitutional provisions prevent the enactment of any law which extinguishes or limits the powers conferred by the constitution.

A state constitution is equally binding on the political subdivisions and courts of the state, and on every department and officer and every citizen. Any attempt to do that which is proscribed in any manner other than that prescribed or to do that which is prohibited is repugnant to that supreme and paramount law and is invalid.

Section 59. Effect of emergency

The principles already stated with reference to the exercise of powers during emergency and the relation thereto of the provisions of the United States Constitution¹ are equally applicable to the provisions, inhibitions, and guarantees of the various state constitutions. Thus, no new power or authority is created by a public emergency, although such a situation may disclose the existence of latent power and may call for liberal construction of constitutional powers.

Many state constitutions or legislation enacted pursuant to such constitutions, provide for the exercise, usually by the state's governor, of emergency powers, although some do not so provide in specific situations."

(Note: All citation references have been omitted in the interest of time and space.)

¹ (from the discussion in Am Jur 16 2d Section 52 on "effect of emergency" with respect to the Federal Constitution)

"Section 52. - Effect of emergency

No emergency justifies the violation of any of the provisions of the United States Constitution. An emergency, however, while it cannot create power, increase granted power, or remove or diminish the restrictions imposed upon the power granted or reserved, may allow the exercise of power already in existence, but not exercised except during an emergency.

The circumstances in which the executive branch may exercise extraordinary powers under the Constitution are very narrow. The danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. For example, there is no basis in the Constitution for the seizure of steel mills during a wartime labor dispute, despite the President's claim that the war effort would be crippled if the mills were shut down.

III Observation: The Supreme Court has not denied the reality of dangers from foreign or internal conflicts. Rather, it has recognized the need to respect constitutional requirements even in troubled times. Security interests may be affected by fluctuations in international trade and the supply of natural resources, by social unrest at home and abroad, and by public disclosure of policy deliberations; but such events cannot routinely justify invasions of privacy or restrictions on expression without devaluing and eventually destroying those rights. Nonetheless, the Court has recognized that authority of an emergency nature to protect national security information is vested in the President as head of the executive branch and as Commander in Chief."

VII - CONSTITUTIONS MUST BE CONSTRUED TO REFERENCE THE COMMON LAW - SUMMARY PROCEEDINGS ARE NULL AND VOID

"As to the construction, with reference to Common Law, an important canon of construction is that constitutions must be construed to reference to the Common Law." "The Common Law, so permitted destruction of the abatement of nuisances by summary proceedings³ and is was never supposed that a constitutional provision was intended to interfere with this established principle and although there is no common law of the United States in a since of a national customary law as distinguished from the common law of England, adopted in the several states. In interpreting the Federal Constitution, recourse may still be had to the aid of the Common Law of England. It has been said that without reference to the common law, the language of the Federal Constitution could not be understood." [16Am Jur 2d., Sec. 114:]

VIII - SHALL NOT INFRINGE

"Various facts of circumstances extrinsic to the constitution are often resorted to, by the courts, to aid them and determining its meaning, as previously noted however, such extrinsic aids may not be resorted to where the provision in the question is clear and unambiguous in such a case the courts must apply the terms of the constitution as written and they are not at liberty to search for meanings beyond the instrument." [16Am Jur 2d., Sec. 117:]

IX - IRRECONCILABLE CONFLICT BETWEEN STATUTE AND CONSTITUTION RESOLVED IN FAVOR OF THE CONSTITUTIONALITY AND THE BENEFICIARY

"In all instances, where the court exercise it's power to invalidate legislation on constitutional grounds, the conflict of the statute, with the constitution must be irreconcilable. Thus a statute is not to be declared unconstitutional unless so inconsistent with the constitution that it cannot be enforced without a violation thereof. A clear incompatibility between law and the constitution must exist before the judiciary is justified holding the law unconstitutional. This principle is of course in line with the rule that doubts as the constitutionality should be resolved in favor of the constitutionality and the beneficiary." [16Am Jur 2d., Sec. 255:]

Stromberg v. California, 283 U.S. 359 (1931). [1] was a United States Supreme Court case in which the Court ruled 7-2 that a 1919 California statute banning red flags was unconstitutional because it violated the First and Fourteenth Amendments to the United States Constitution. This decision is considered a landmark in the history of First Amendment constitutional law, as it was one of the first cases where the Court extended the Fourteenth Amendment to include a protection of the substance of the First Amendment, in this case symbolic speech or "expressive conduct", from state infringement. The U.S. Supreme Court held that, except in rare cases, censorship is unconstitutional.

should receive a literal interpretation in favor of the Citizen, is especially true, with respect to those provisions which were designed to safeguard the liberty and security of the Citizen in regard to person and property." [16Am Jur 2d: 16Am Jur 2d., Sec. 97; Bary v. United States - 273 US 128]

NO EMERGENCY HAS JUST CAUSE TO SUPPRESS THE CONSTITUTION

"While an emergency cannot create power and no emergency justifies the violation of any of the provisions of the United States Constitution or States Constitutions. Public emergency such as economic depression for especially liberal construction of constitutional powers and it has been declared that because of national emergency, it is the policy of the courts of times of national peril, so liberally to construed the special powers vested in the chief executive as to sustain an effectuate the purpose there of, and to that end also more liberally to construed the constituted division and classification of the powers of the coordinate branches of the government and in so far as may not be clearly inconsistent with the constitution." [16Am Jur 2d., Sec. 98:]

VII - CONSTITUTIONS MUST BE CONSTRUED TO REFERENCE

THE COMMON LAW - SUMMARY PROCEEDINGS ARE NULL AND VOID

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³ **Summary proceeding.** Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. In procedure, proceedings are said to be summary 'when they are short and simple in comparison with regular proceedings; e., in comparison with the proceedings which alone would have been applicable, either in the same or analogous cases, if summary proceedings had not been available. Sweet. [Blacks Law 4th, and see Phillips v. Phillips, 8 N.J.L. 122.]

175 **X - SUPREME LAW IS THE BASES OF ALL LAW - ALL FICTION OF LAW IS NULL**

Nisi prius courts relies on statutes, which is fiction of law, that seeks to control⁴ the behavior of the sovereign⁵ people⁶ of New York, who are under common law, not statutes, and who ordained and established⁷ the law, therefore legislators cannot legislate the behavior of the people.

180 *"No provision of the Constitution is designed to be without effect," "Anything that is in conflict is null and void of law", "Clearly, for a secondary law to come in conflict with the supreme Law was illogical, for certainly, the supreme Law would prevail over all other laws and certainly our forefathers had intended that the supreme Law would be the bases of all law and for any law to come in conflict would be null and void of law, it would bare no power to enforce, in would bare no obligation to obey, it would purport to settle as if it had never existed, for unconstitutionality*
 185 *would date from the enactment of such a law, not from the date so branded in an open court of law, no courts are bound to uphold it, and no Citizens are bound to obey it. It operates as a near nullity or a fiction of law⁸."*

"All codes, rules, and regulations are for government authorities only, not human/Creators in accordance with God's laws. All codes, rules, and regulations are unconstitutional and lacking due process..." [Rodrigues v. Ray Donovan]
 190

"The common law is the real law, the Supreme Law of the land, the code, rules, regulations, policy and statutes are not the law", [Self v. Rhay, 61 Wn (2d) 261]

195

⁴ Rom 9:21 Hath not the potter power over the clay,

⁵ The very meaning of 'sovereignty' is that the decree of the sovereign makes law. [American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.] A consequence of this prerogative is the legal ubiquity of the king. His majesty in the eye of the law is always present in all his courts, though he cannot personally distribute justice. (Fortesc.c.8. 2Inst.186) His judges are the mirror by which the king's image is reflected. [1 Blackstone's Commentaries, 270, Chapter 7, Section 379.]

⁶ PEOPLE. People are supreme, not the state. [Waring vs. the Mayor of Savannah, 60 Georgiaat 93]; The state cannot diminish rights of the people. [Hertado v. California, 100 US 516]; Preamble to the US and NY Constitutions - We the people ... do ordain and establish this Constitution...; ...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves... [CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455, 2 DALL (1793) pp471-472]; The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. [Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.]

⁷ US Constitution - We the people ... do ordain and establish this Constitution for the United States of America.

⁸ FICTION OF LAW. Something known to be false is assumed to be true. Ryan v. Motor Credit Co., 130 N.J.Eq. 531, 23 A.2d 607, 621. that statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land. [Hoke vs. Henderson, 15, N.C.15, 25 AM Dec 677]. A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Best, Ev. 419.

**XI - NO ONE IS BOUND TO OBEY AN UNCONSTITUTIONAL LAW
NO COURTS ARE BOUND TO ENFORCE IT**

"The general rule is that a unconstitutional statute, whether Federal or State, though having the form and name of law as in reality no law, but is wholly void and ineffective for any purpose since unconstitutionality dates from the enactment and not merrily from the date of the decision so braining it. An unconstitutional law in legal contemplation is as inoperative as if it never had been passed. Such a statute lives a question that is purports to settle just as it would be had the statute not ever been enacted. No repeal of an enactment is necessary, since an unconstitutional law is void. The general principles follows that it imposes no duty, converse no rights, creates no office, bestows no power of authority on anyone, affords no protection and justifies no acts performed under it. A contract which rests on a unconstitutional statute creates no obligation to be impaired by subsequent legislation. No one is bound to obey an unconstitutional law. No courts are bound to enforce it. Persons convicted and fined under a statute subsequently held unconstitutional may recover the fines paid. A void act cannot be legally inconsistent with a valid one and an unconstitutional law cannot operate to supersede an existing valid law. Indeed, in so far as a statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal, or in anyway effect an existing one, if a repealing statute is unconstitutional, the statute which it attempts to repeal, remains in full force and effect and where a statute in which it attempts to repeal remains in full force and effect and where a clause repealing a prior law is inserted in the act, which act is unconstitutional and void, the provision of the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law. The general principle stated above applied to the constitution as well as the laws of the several states insofar as they are repugnant to the constitution and laws of the United States." [16Am Jur 2d., Sec. 256:]

XII - CONGRESS CANNOT ALTER RIGHTS

"On the other hand it is clear that Congress cannot by authorization or ratification give the slightest effect to a state law or constitution which is in conflict with the Constitution of the United States." [16Am Jur 2d., Sec. 258]

XIII - RIGHTS DO NOT COME IN DEGREES

"Although it is manifested that an unconstitutional provision in the statute is not cured because included in the same act with valid provisions and that there is no degrees of constitutionality." [16Am Jur 2d., Sec. 260:]

XIV - STATES CANNOT LICENSE RIGHTS

"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution and that a flat license tax here involves restraints in advance the constitutional liberties of Press and Religion and inevitably tends to suppress their existence. That the ordinance is non-discriminatory and that it applies also to peddlers of wares and merchandise is immaterial. The liberties granted by the first amendment are and in a preferred position. Since the privilege in question is guaranteed by the Federal Constitution and exist independently of the states authority, the inquiry as to whether the state has given something for which it cannot ask a return, is irrelevant. No state may convert any secured liberty into a privilege and issue a license and a fee for it." [**Mudook v. Penn. 319 US 105:(1943)**]

"If the state does convert your right into a privilege and issue a license and a fee for it, you can ignore the license and a fee and engage the right with impunity." [**Shuttlesworth v. Birmingham Al. 373 US 262:(1962)**]

XV - "OFFICERS OF THE COURT HAVE NO IMMUNITY WHEN VIOLATING CONSTITUTIONAL RIGHT, FROM LIABILITY"

"The right of action created by statute relating to deprivation under color of law, of a right secured by the constitution and the laws of the United States and comes claims which are based solely on statutory violations of Federal Law and applied to the claim that claimants had been deprived of their rights, in some capacity, to which they were entitled." **Owen v.Independence 100 Vol. Supreme Court Reports. 1398:(1982); Main v. Thiboutot 100 Vol. Supreme Court Reports. 2502:(1982)**

Title 18 US Code Sec. 241 & Sec. 242: "If upon conviction, you are subject to a \$10,000.00 fine, ten years in jail, or both, and if theft results, life in prison." **Title 42 US Code Sec. 1983, Sec. 1985, & Sec. 1986:** Clearly established the right to sue anyone who violates your constitutional rights. The Constitution guarantees: he who would unlawfully jeopardize your property loses property to you, and that's what justice is all about. "Judge are deemed to know the law and are sworn to uphold it and can hardly claim that they acted in good faith for willful deformation of a law and certainly cannot pled ignorance of the law, for that would make the law look unintelligent for a knowledgeable judge to claim ignorance of a law, when a Citizen on the street cannot claim ignorance of the law. Therefore, there is no judicial immunity."

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XVII - SOVEREIGNTY:

The very meaning of 'sovereignty' is that the decree of the sovereign makes law

"It is the public policy of this state that public agencies exist to aid in the conduct of the people's business.... The people of this state do not yield their sovereignty to the agencies which serve them. ...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves....." [CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL (1793) pp471-472.]

"The very meaning of 'sovereignty' is that the decree of the sovereign makes law". [American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.]

"The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative". [Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.]

"A consequence of this prerogative is the legal ubiquity of the king. His majesty in the eye of the law is always present in all his courts, though he cannot personally distribute justice". (Fortesc.c.8. 2Inst.186) "His judges are the mirror by which the king's image is reflected". [1 Blackstone's Commentaries, 270, Chapter 7, Section 379.]

SOVEREIGNTY [Black's Law Dictionary, Fourth Edition] - The power to do everything in a state without accountability,--to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like. [Story, Const. Sec 207]

"Sovereignty in government is that public authority which directs or orders what is to be done by each member associated in relation to the end of the association. It is the supreme power by which any citizen is governed and is the person or body of persons in the state to whom there is politically no superior. The necessary existence of the state and that right and power which necessarily follow is "sovereignty." By "sovereignty in its largest sense is meant supreme,